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In the Supreme Court of the United States

October Term, 1984

RICHARD A. SNIDER
and
MARGARET Q. SNIDER
Appellants,

vs.

COMMONWEALTH OF VIRGINIA
Appellee.

On Appeal From the Supreme Court
Of the Commonwealth of Virginia

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Are a dissenting Roman Catholic family's religious convictions protected by the United States Constitution, if their interpretation of sacred encyclicals differs from the current theology of the Vatican and several other traditional Catholics?

2. Is the Virginia Supreme Court's decision, which upheld the constitutionality of the challenged Virginia Code sections, moot?

3. Is the argument that the case involves the sufficiency of the evidence rather than a federal question a red herring?

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This Appeal presents the following substantial federal question: Whether a dissenting Roman Catholic family's religious convictions are protected by the United States Constitution, if their interpretation of sacred Encyclicals

differs from the current theology of the Vatican and several other traditional Catholics.

Although Appellee's Motion to Dismiss downplays the nationwide importance of this case, the important threshold question presented by this Appeal involves a constitutionally significant definitional problem: What is a religion?

Virginia Code Section 22.1-257 in paragraph A(2) provides that "A school board...[s]hall excuse from attendance at school any pupil who, together with his parents, by reason of **bona fide** religious training or belief, is conscientiously opposed to attendance at school" (emphasis added). Appellants do not qualify for this exemption.

The state courts have held that Appellants' religious convictions,

concerning education, stem from a "philosophical difference [with Catholic church authorities] not based on theology." See page A-20 of "Jurisdictional Statement" (hereinafter abbreviated as J.S.). The trial judge found specifically that the religious convictions of Mrs. Snider "are not based in (sic) theology." (J.S., A-15). Accordingly, the Virginia courts held that, in Appellants' case, "strict scrutiny...is inapplicable." (J.S., A-17).

The state courts erred by assuming that the religion clauses of the United States Constitution protect only religious beliefs of people well versed in theology. Clearly, the religion clauses of the United States Constitution, unlike the challenged Virginia Code Sections do not require a person's religious

convictions to be "theological in nature." (J.S., A-14). Cf. Torcaso v. Watkins, 367 U.S. 488(1961), United States v. Seeger, 380 U.S. 163 (1965), Welsh v. United States, 398 U.S. 333(1970). Obviously, substantial federal questions are presented when an American Catholic's dissent from the Vatican's view of sin is viewed merely as a philosophical difference that is unprotected by the First Amendment's religion clauses.

Appellants are members of a traditional Roman Catholic fellowship that does not accept many of Vatican II's changes in church doctrine. (Tr. dated September 22, 1983, pp.4-12). Appellant, Margaret Q. Snider, explained that traditional Roman Catholics are "not bound to accept anything that would break from tradition [since] if something is an eternal truth

you can't all of a sudden, after 1,960 years, change it." (Tr. p.35). The trial judge based his findings on the following reasoning: "I have some concern," he stated, "when the traditional Catholic breaks from the Catholic Church, but doesn't break from the church in Rome, which means subjectively, they want to...apply their own conclusions as to how far they are going to participate as Roman Catholics." (J.S., A-17-18.).

The trial judge, however, did not want to listen to all of the Encyclicals from which Mrs. Snider derived her religious convictions concerning her children's education. (Tr. p.18). Forced to generalize, Mrs. Snider explained what "she believes she is supposed to do" (Tr. p.18) and how she is constrained by the Encyclicals (Tr. pp.19-20) and canons of her church (Tr. p.28). For example, Mrs.

Snider, after referring to the "deadly sin of impiety," (Tr. pp.27-28) testified, "I am required to have my children's curriculum...God-centered. That means that God must permeate every facet of their instruction." (Tr. p.21). She also testified it is "necessary" to educate my children as Catholics at home in "every subject." (Tr. p.36). "For [concerning] the education of my children...I am responsible to God..." (Tr. pp.60-61). The trial judge conceded that "the parents' primary responsibility for the...educating...of their children...is...given to them by godly fear." (J.S., A-16).

The error of the state courts lies in their **characterization** of the evidence, which, admittedly, shows Appellants to be fundamentalists resisting the winds of theological change. [For a discussion of

the characterization problem, see Johnson, Concepts and Compromise in First Amendment Religious Doctrine, 67 Calif. 817(1984).] Mrs. Snider's religious convictions are characterized as "subjective personal standards" unprotected by the challenged Code Section (see Motion to Dismiss, p.20), because they are not shared by...all members of their fundamentalist group within the Catholic church." (Brief of Amicus Curiae, Attorney General of Virginia, pp.4-5; emphasis added). If Virginia's position were the law of the land, a modern day Martin Luther would not be entitled to protection under the religion clauses of the Constitution. Indeed, St. Thomas Aquinas's religious views on education would be suspect to the extent he and the Papacy differed philosophically.

The dispositive principle disregarded by the state courts is this: "the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith [since] religious beliefs worthy of respect are the product of free and voluntary choice by the faithful." Wallace v. Jaffree, 53 LW 4665, 4669(1985). This principle applies to Catholics who dissent from what the Vatican prescribes as orthodox. Cf. Board of Education v. Barnette, 319 U.S. 624, 642(1943).

The Virginia Supreme Court's decision upholds the constitutionality of the challenged Virginia Code Sections and is not moot.

The Appellee argues that the Virginia Supreme Court did not "explicitly" pass

on any federal question (see Motion to Dismiss, p. 19.). The Appellee, however, fails to reveal that the Virginia Supreme Court was persuaded by the argument -- repeated once again in their Motion -- that "the beliefs of the Sniders...were not based on religion" and therefore "there were no constitutional questions to be decided." (Appellee's Motion to Dismiss, p.21). Clearly the case is not moot because of the continuing harm, the likelihood of future recurrences of harm, and the collateral consequences of Appellants' guilty convictions. See e.g., Sibron v. New York, 392 U.S. 40(1968), and North Carolina v. Rice, 404 U.S. 244(1971).

The argument that the case involves the sufficiency of the evidence rather than a federal question is a red herring that unsuccessfully conceals the mischief of the challenged statute.

Appellants do not question the trial court's "finding" that the Sniders' religious beliefs are not "bona fide" within the meaning of the exemption in Virginia compulsory attendance law. Indeed, because Appellants' evidence was legally insufficient to demonstrate their religious beliefs are "bona fide" under Code Section 22.1-257, Virginia's statutory exemption is invidiously underinclusive. As the state court points out, the statute requires all professing Catholics to "be governed by tenets of that [Catholic] faith" (Tr. dated Oct. 27, 1983, p. 38) regardless of their "sincere religious convictions."

(Id. at 39). As the trial judge stated:

> I don't have any trouble finding [the Sniders] are sincere. She is just as sincere as she can be. But I don't think it is based on theology. It's based on a difference of philosophy [with the Roman Catholic Church authorities] and the statute says it can't be based on philosophy. (J.S., A-20)

Although, under Virginia law, a person who professes to be a Roman Catholic must adhere to a particular theology in line with the trial judge's reading of the Encyclicals (J.S., A-14) and his personal knowledge of the Catholic faith (J.S., A-14) in order to qualify for a bona fide religious exemption, the religion clauses of the Constitution are not so restrictive. The First Amendment respects theology but also respects "a broader concept of individual freedom of mind [allowing] the individual to choose his own creed." Wallace v. Jaffree supra at 4669. Hence the instant appeal.

Contrary to Appellee's misleading summary of the testimony of a Roman Catholic priest (Motion to Dismiss, pp.13-15), Father Ringrose testified that the Sniders' faith-inspired beliefs fall "right into line with that of all traditionalist Catholics..." (Tr. dated September 22 and 23, 1983, p. 109). Concerning the Encyclical relied upon by the Appellants, Father Ringrose testified, "We are bound by it as Catholics. We must follow it" (Ibid.) for such "[a]n Encyclical cannot be in or out of vogue." (Tr. 132). Accordingly, Appellants could not, in conscience, send their children to public or parochial school because "they have sincerely arrived at a firm conviction" that the nearby schools "would endanger the faith of the...children, and would expose them to an occasion of sin which they must, by

Catholic teaching, avoid." (Tr. 121). (See also Tr. 124-125.) Indeed, although other traditional Roman Catholics in addition to the Appellants educate their children at home (Tr. 97), and some do not -- the Sniders have no alternative to home education if they are to be "obedient to the faith." (Tr. 125-126).

Despite this kind of testimony, the trial court "decided as a matter of fact, that the Sniders' **religious beliefs** were not rooted in **Catholic theology** but constituted philosophical views that differed from other members of their faith." (Appellee's Motion to Dismiss, pp.17-18) (emphasis added). Because the trial judge's findings were based in part upon his "personal knowledge of the Catholic faith" (J.S., A-14) and his own understanding of the relevant Encyclicals, which, in his view, were taken a

"little far" (J.S., A-14) by Appellants, the trial court consistently characterized Father Ringrose's conception of sin as "subjective opinion", "morality" and as "philosophical...rather than theological..." (Tr. dated October 27, 1983, p.18).

Lower court's judgments, upheld by the Virginia Supreme Court, which found no reversible error, violates the principles of United States v. Ballard, 322 U.S. 78(1944) and Thomas v. Review Board, 450 U.S. 707(1981). These cases hold that the concept of constitutionally protected religion does not depend on whether an individual's religious beliefs are objectively true, are unanimously held by members of his church, or are in accordance with the theology of any particular church hierarchy.

CONCLUSION

The Sniders' creed stems from their reliance upon sacred texts, from their religious feelings of awe, fear, and guilt, from their belief in God and an afterlife, from their comprehensive view of the world, human purposes, and from their **perspective** on moral obligations derived from God's nature. It follows that their creed is religious in nature. See Alston, "Religion" in Encyclopedia of Philosophy discussed by Greenawalt, Religion as a Concept in Constitutional Law, 72 Calif.L. Rev. 753, 764-767(1984). Yet, their religious beliefs are not deemed "bona fide" under the challenged Virginia Code Sections.

Virginia's modern view discriminates against religious creeds that are deemed subjective, personal, and philosophical by trial courts more concerned with

questions of theology rather than with questions of faith. This modern view is contrary to James Madison's position expressed in the Memorial and Remonstrance Against Religious Assessments, where it is written: "The Religion...of every man must be left to the conviction and conscience of every man; and...the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men..." This is the view of the First Amendment, Wallace v. Jaffree, supra at 4669 n.38.

In sum, when the presence of religion is seriously controverted, the threshold question, 'defining religion,' becomes important." Greenawalt, supra at 753. This appeal does not involve routine questions about the sufficiency of evidence, but involves, concerning the

religion clauses of the United States Constitution, important questions of classification and definition. Indeed, the outcome of this appeal will have nationwide, worldwide and historic importance.